

BOARD OF APPEALS CASE NO. 4885	*	BEFORE THE
APPLICANT: Colgate Investments LLP	*	ZONING HEARING EXAMINER
REQUEST: Integrated Community	*	OF HARFORD COUNTY
Shopping Center approval and variances	*	
from the required setbacks in B2 District;	*	
2101 Rock Spring Road, Forest Hill	*	Hearing Advertised
	*	Aegis: 7/14/99 & 7/21/99
HEARING DATE: September 8, 1999	*	Record: 7/16/99 & 7/23/99

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ZONING HEARING EXAMINER'S DECISION

Colgate Investments, LLP, a Maryland limited liability partnership, Applicant, is the owner of the property known as 2101 Rock Spring Road, Forest Hill, Maryland 21050, which is designated among the records of the State Department of Assessments and Taxation on Tax Map 40, in Grid 1-D, as Parcel 231. The subject property is 7.135 acres in size and is zoned B-2, Community Business District.

The Applicant appeared before the Hearing Examiner requesting Board of Appeals approval to locate an Integrated Community Shopping Center ("ICSC") on the subject property and the following two (2) variances: 1) a variance to permit an existing building to be located less than fifty (50) feet from an adjacent residential district (40 feet proposed); and 2) a variance to permit a portion of the existing parking lot of the ICSC to be located with a buffer yard less than 25 feet from an adjacent residential district (4 feet proposed) as shown on the site plan filed with the application.

Howard Klein, a partner of the Applicant, testified that the Applicant is comprised of members of the Klein family. He noted that the subject property, Lot 1 and Lot 3, is currently improved with a 58,000 square foot grocery store. Lot 2, the site of a Baltimore County Savings and Loan branch office, is not the subject of the application. He stated that Lot 3 will be eliminated if the ICSC approval is granted.

The witness testified that the Applicant is requesting ICSC approval to provide greater flexibility in developing the subject property. He explained that there is a market for additional retail users in the Forest Hill area which the Applicant cannot develop without ICSC approval.

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The witness indicated that the Applicant would suffer practical difficulty if the requested variance is denied in that without them, the proposed development could not be conducted on the site. He testified it would be unreasonable not to allow the existing building and parking lot to continue to be used if ICSC approval is granted. Mr. Klein testified that granting the requested variances would not hurt anyone in any way. He noted that the adjoining property, although zoned residential, is not and cannot be used for residential development. The witness testified that the current use of the existing building and parking lot do not harm adjoining property owners. Finally, Mr. Klein testified that the conditions of approval recommended in the Staff Report are acceptable.

Paul Muddiman, an expert site plan designer employed by Morris & Ritchie Associates, Inc., testified that he designed the site plan for the subject property. He explained that the site is 7.135 acres in size and has access from Route 24, via Colgate Drive, a signalized intersection. He noted that except for the requested variances, the proposed development complies with all ICSC requirements. He explained that it is not feasible to redesign or move the existing building or parking lot such that the requested variances are not necessary.

Denis Canavan, an expert land planner, testified that he reviewed the application, the staff report and visited the subject property. He confirmed that except for the requested variances, the proposed site plan met all Zoning Code ("Code") requirements. The witness explained that as noted in the Staff Report, all limitations guides and standards of Section 267-9(l) were satisfied in this case.

Mr. Canavan also testified that the site was an appropriate location for an ICSC. He noted that the subject property is located at the intersection of two major roadways, Rt. 23 and Rt. 24, and is located in the Development Envelope under the Land Use Plan in an area already zoned for and developed with commercial uses. He explained that the subject property's location, limited access, irregular shape and current improvements make it unique such that the requested variances are justified. The witness explained that as noted by Mr. Muddiman, there is no room on the site to move the existing building and parking lot such that the requested variances are not necessary.

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He pointed out that the area most impacted by the requested variances is improved with a water tank and otherwise is comprised of non tidal wetlands which cannot be developed. Mr. Canavan stated that accordingly, denial of the variances would cause practical difficulty to the Applicant and cause no adverse impact to adjoining property owners.

Anthony S. McClune of the Department of Planning and Zoning, ("Department") summarized the Department's Staff Report which recommended conditional approval of the Applicant's request.

No protestants appeared in opposition to the Applicant's request.

CONCLUSION:

The Applicant is requesting Board of Appeals approval to locate an ICSC on the subject property and the following two (2) variances: 1) a variance to permit a building to be less than 50 feet from an adjacent residential district (40 feet proposed); and 2) a variance to permit a portion of the parking lot of the ICSC to be located with a buffer yard of less than 25 feet from a road or an adjacent residential district (4 feet proposed).

Section 267-47(A)(5)(b) of the Code provides in pertinent part as follows:

All parking lots, loading areas and outdoor storage areas shall be separated with buffer yards of at least twenty-five (25) feet from any adjacent roads and residential districts.

- (5) No building shall be less than thirty (30) feet from the parcel boundary nor fifty (50) feet from an adjacent residential district.

The Code, pursuant to Section 267-11, authorizes the granting of variances provided the Board finds that:

1. By reason of the uniqueness of the property or topographical conditions literal enforcement of Part 1 will result in practical difficulty or unreasonable hardship; and
2. The variance will not be substantially detrimental to adjacent properties and will not materially impair the purposes of this Part 1 or the public interest.

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The concept of uniqueness in variance cases was discussed by the Court of Special Appeals in the case of North v. St. Mary's County, 99 Md. App. 502, 638 A.2d 1175 (1994) wherein the court stated:

“In the zoning context the “unique” aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. “Uniqueness” of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

An example of uniqueness is found in the use variance case of Frankel v. Mayor and City Council, 223 Md. 97, 104 (1960), where the court noted: “He met the burden; the irregularity of the...lot...that it was located on a corner of an arterial highway and another street, that it is bounded on two sides...by parking lots and public...institutions, that immediately to its south are the row houses...”

Based on the testimony presented and the Staff Report, the Hearing Examiner finds that the request to conduct an ICSC on the site as described by the Applicant's witnesses would not adversely affect the public health, safety and general welfare, nor would it result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. As the Staff Report indicates, all applicable Code requirements, with the exception of the requested variances, are met. All of the Limitations, Guides and Standards set forth in the Code will be met if approval is granted.

Based on the testimony provided by the Applicant, the Hearing Examiner finds that the property is unique, given its irregular shape, limited access and its location. The adjoining property which would most be affected by the requested variances, although zoned residential, is improved with a water tower and otherwise consists of wetlands which prevent its development for residential purposes. The evidence showed that requested variances will have no greater impact on the adjacent residential property than the approved grocery store.

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The existing parking lot and building which require the variances meet current setback requirements. It is only the change to an ICSC which imposes additional setback requirements. Existing natural vegetation on the adjoining residentially zoned property will act as a buffer from the ICSC parking lot and building. As noted in the Staff Report, the portion of the existing parking lot adjacent to Rt. 24 is ten feet from the road right of way; however, the property is line is forty feet or more from the edge of the paving for the road. No impact will be caused by allowing that portion of the existing parking lot to remain in its current location. The Hearing Examiner finds that based on the evidence, granting the requested setback variances would not adversely affect adjoining property owners or the public interest.

Furthermore, the evidence showed that the existing building and parking lot location cannot be moved without adversely affecting the site. Thus, the Hearing Examiner finds that denial of the variances would result in practical difficulty to the Applicant.

Based on the evidence, it is the recommendation of the Hearing Examiner that the Applicant's request to build an Integrated Community Shopping Center be approved, including the requested variances, subject to the following conditions:

1. Total square footage of buildings on the site plan not exceed 85,000 square feet.
2. The Applicant shall submit a preliminary and site plan, including a landscaping plan and lighting plan for review by the Development Advisory Committee (DAC).
3. The Applicant shall revise Final Plat 96-3 to eliminate Lot 3.
4. The Applicant shall obtain all necessary permits and inspections to construct the building addition.

Date **SEPTEMBER 15, 1999**

L. A. Hinderhofer
Zoning Hearing Examiner